

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

TIFFANY SARGANT, et. al.,

Plaintiffs,

v.

HG STAFFING, LLC et. al.,

Defendants.

3:13-cv-00453-LRH-WGC

ORDER

Before the court is a motion to compel (Doc. # 26)¹ filed by Plaintiffs Tiffany Sargent, Bailey Cryderman, Huong ("Rosie") Boggs, and Jacquelyn Wiederholt, on behalf of themselves and all others similarly situated (collectively, Plaintiffs). Defendants HG Staffing, LLC, MEI-GSR Holdings LLC d/b/a Grand Sierra Resort (collectively, GSR) filed a response. (Doc. # 29.) Plaintiffs filed a reply (Doc. # 31) as well as a supplemental memorandum in support of their motion (Doc. # 34). The court held a hearing on Plaintiffs' motion on April 17, 2014, and issues the instant Order.

I. SUMMARY OF ACTION

Plaintiffs have brought a collective and class action complaint on behalf of themselves and all others similarly situated against GSR alleging that GSR: (1) failed to pay wages for all hours worked in violation of 29 U.S.C. § 201, *et. seq.*; (2) failed to pay overtime in violation of 29 U.S.C. § 207; (3) failed to pay overtime at the correct rate in violation of 29 U.S.C. § 207; (4) failed to compensate for all hours worked in violation of Nev. Rev. Stat. 608.140 and 608.016; (5) failed to pay minimum wages in violation of the Nevada Constitution and Nev. Rev. Stat. 608.250; (6) failed to pay overtime in violation of Nev. Rev. Stat. 608.140 and 608.018; (7) failed to timely pay all wages due and owing in violation of Nev. Rev. Stat 608.140 and 608.020-050; and (8) made unlawful chargebacks in violation of Nev. Rev. Stat. 608.140 and 608.100.

¹ Refers to court's docket number.

1 (See Doc. # 26 at 7:4-16; First Am. Compl., Doc. # 10.)

2 The action was originally filed in the Second Judicial District Court of the State of
3 Nevada and was removed to the United States District Court by GSR on June 21, 2013. (See
4 Doc. # 6.) Plaintiffs filed their First Amended Complaint on August 23, 2013. (Doc. # 10.) GSR
5 answered on October 1, 2013. (Doc. # 14.) The parties have entered into stipulated protective
6 order governing confidential information which was approved by the court. (Docs. # 24, # 25.)

7 As indicated above, Plaintiffs have brought this case as a collective action under the Fair
8 Labor Standards Act (FLSA) and as a class action under various provisions of the Nevada
9 Revised Statutes. A collective action is a form of class action status unique to the FLSA. See 29
10 U.S.C. § 216(b). It allows an action to be commenced against an employer who has allegedly
11 violated the provisions of 29 U.S.C. § 206 or § 207 by any an employee on behalf of him or
12 herself or other similarly situated employees; however, no employee is considered a party-
13 plaintiff until he or she consents in writing to such and the consent is filed in the court where the
14 action is brought. 29 U.S.C. § 216(b).

15 With the case being removed to federal court, Federal Rule of Civil Procedure 23 governs
16 class certification insofar as Plaintiffs claims for violations of Nevada law are concerned.
17 Plaintiffs have not yet filed a motion for class certification under Federal Rule of Civil Procedure
18 23 for the claims arising under Nevada law; instead, Plaintiffs have indicated they reserve their
19 right to do so at a later time. (See Doc. # 18 at 9 n. 3.)

20 With respect to Plaintiff's FLSA claims, Plaintiffs' motion for circulation of notice
21 pursuant to 29 U.S.C. § 216(b) is currently fully briefed and pending before United States
22 District Judge Larry R. Hicks. (See Docs. # 18, # 19, # 20, # 21, # 23.) In analyzing this motion,
23 the court's inquiry is focused on whether the potential plaintiffs are "similarly situated" to create
24 an opt-in class under 29 U.S.C. § 216(b). See *Lewis v. Nevada Property I, LLC*, No. 2:12-cv-
25 01564-MMD-GWF, 2013 WL 237098, at * 7 (D. Nev. Jan. 22, 2013) (citing *Davis v. Westgate*
26 *Planet Hollywood Las Vegas*, No. 2:08-cv-00722-RCJ-PAL, 2009 WL 102735, at * 9 (D. Nev.
27 Jan. 12, 2009)); see also *Kinney Shoe Corp. v. Vorhes*, 564 F.2d 859, 862 (9th Cir. 1977)
28 (requirements for class certification under Fed. R. Civ. P. 23(a) do not apply to claims arising

1 under the FLSA).

2 Plaintiffs have now filed a motion to compel responses to discovery. While the Plaintiffs
3 have brought this case as a collective action under the FLSA and a class action under Federal
4 Rule of Civil Procedure 23, the analysis of the parameters of allowable discovery as applied to
5 the discovery disputes raised remains the same.

6 **II. MOTION TO COMPEL**

7 Plaintiffs seek an order compelling GSR to respond completely to an interrogatory and to
8 produce documents responsive to various requests for production of documents (RFPs). (Doc.
9 # 26.) Defendants responded to Plaintiffs' motion to compel (Doc # 29) and Plaintiff replied
10 (Doc. # 31). Plaintiff also filed a supplemental memorandum (Doc. # 34) after Plaintiff received
11 Defendants' Second Supplemental Disclosures.

12 Plaintiffs' initial dispute concerned GSR's response to its single interrogatory and to RFPs
13 5 through 21. (Doc. # 26.) In subsequent filings, Plaintiffs confirmed that after filing their motion
14 GSR provided supplemental responses, resolving the dispute as to RFPs 7-9 and 11 and
15 providing some of the information requested in the interrogatory. Therefore, this Order will only
16 address RFPs 5, 6, 10, and 12-21 and the remaining information in dispute in the interrogatory.

17 **III. LEGAL STANDARD**

18 **A. Motion to Compel**

19 Rule 37 of the Rules of Civil Procedure authorizes a party to file a motion to compel an
20 answer to an interrogatory under Rule 33 as well as the production or inspection of documents
21 under Rule 34. Fed. R. Civ. P. 37(a)(1), (3)(B)(iii), (iv). For purposes of Rule 37, an "evasive or
22 incomplete disclosure" is treated as a failure to respond. Fed. R. Civ. P. 37(a)(4).

23 **B. Scope of Discovery**

24 Litigants "may obtain discovery regarding any nonprivileged matter that is relevant to
25 any party's claim or defense." Fed. R. Civ. P. 26(b)(1). In addition, "[f]or good cause, the court
26 may order discovery of any matter relevant to the subject matter involved in the action. Relevant
27 information need not be admissible at the trial if the discovery appears reasonably calculated to
28 lead to the discovery of admissible evidence." *Id.* The relevance standard is one that is

1 necessarily broad in scope so as to "encompass any matter that bears on, or that reasonably could
2 lead to other matter that could bear on, any issue that is or may be in the case." *Oppenheimer*
3 *Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978) (citing *Hickman v. Taylor*, 329 U.S. 495, 501
4 (1947)). However, relevancy is not without "ultimate and necessary boundaries." *Hickman*, 329
5 U.S. at 507. Courts have broad discretion to determine relevancy for discovery purposes.

6 **IV. DISCUSSION**

7 **A. The Interrogatory**

8 Plaintiffs served a single interrogatory on GSR, asking it to identify each putative class
9 member, including their address, telephone number, email address, job title, job classification,
10 dates of employment and rate of pay. (Doc. # 26-1 at 1-4.)

11 GSR asserted several pages of boilerplate general objections, followed by a page of
12 "definitions of specific objections," and then objected that the interrogatory was premature
13 because the court had not yet certified a class, and absent class certification, providing this
14 information would violate the privacy rights of these employees. (Doc. # 26-3.)

15 Relying on *Putnam v. Eli Lilly Co.*, 508 F.Supp.2d 812 (C.D. Cal. 2007), Plaintiffs argue
16 they are entitled to discover this information about the putative class members. (Doc. # 26 at 11.)
17 In their response, GSR stated that they would be providing a supplemental response to Plaintiffs
18 including a list of the approximately 2300 putative class members. (Doc. # 29 at 2.) In their
19 supplemental memorandum, Plaintiffs acknowledged that GSR subsequently provided all of the
20 requested information in a supplemental response except the putative class members' job title,
21 job classification and rate of pay. (Doc. # 34.)

22 The line of authority relied on by Plaintiffs to support their argument that GSR should
23 have to produce the information requested in the interrogatory involved a class action governed
24 by Federal Rule of Civil Procedure 23. Neither Plaintiffs nor GSR addressed whether discovery
25 of this information is permissible in a collective action brought under the FLSA. The parties also
26 failed to address whether discovery of this information is permissible prior to conditional
27 certification of the collective action. Defendants' primary objection to Plaintiffs' discovery was
28 predicated upon "an expectation of privacy in employment records which renders them

1 confidential," citing a 1982 Montana Supreme Court decision, *Montana Human Rights*
2 *Division v. Billings*, 199 Mont. 434, 649 P.2d 1283 (1982). *See, e.g.*, Doc. # 29 at 6.

3 That being said, the court finds the inquiry into Rule 23's commonality and typicality
4 requirements to be somewhat analogous to the "similarly situated" analysis in a collective action
5 brought under the FLSA. The court acknowledges that courts in this circuit have routinely
6 allowed the pre-certification discovery of contact information (names, addresses, telephone
7 numbers, and in recent cases even email addresses) of putative class members in wage and hour
8 class action litigation in cases governed by Rule 23. *See, e.g., Bell v. Delta Air Lines, Inc.*, No. C
9 13-01199 YGR (LB), 2014 WL 985829, at * 3 (N.D. Cal. Mar. 7, 2014); *Coleman v. Jenny*
10 *Craig, Inc.*, Civil No. 11-cv-1301-MMA (DHB), 2013 WL 2896884 (S.D. Cal. June 12, 2013);
11 *Willner v. Manpower, Inc.*, No. C 11-2846 JSW (MEJ), 2012 WL 4902994 (N.D. Cal. Oct. 16,
12 2012); *Brian Algee v. Nordstrom, Inc.*, No. C 11-301 CW (MEJ), 2012 WL 1575314 (N.D. Cal.
13 May 3, 2012); *Artis v. Deere & Co.*, 276 F.R.D. 348 (N.D. Cal. June 29, 2011); *Currie-White v.*
14 *Blockbuster, Inc.*, 2010 WL 1526314, at * 2 (N.D. Cal. Apr. 15, 2010); *Putnam v. Eli Lilly &*
15 *Co.*, 508 F.Supp.2d 812, 814 (C.D. Cal. 2007).

16 The court finds the reasoning employed by these courts in cases governed by Rule 23 to
17 be applicable to a case brought as a collective action under the FLSA. In order to have their
18 collective action certified under the FLSA, the Plaintiffs must show that they are "similarly
19 situated" to the potential plaintiffs. As a result, identifying the potential Plaintiffs is certainly
20 essential, and therefore relevant, to this inquiry, as it is in connection with class certification
21 under Rule 23.

22 To the extent GSR objects to the disclosure of basic contact information on the basis that
23 it constitutes an invasion of these employees' right to privacy, that objection is overruled. Again,
24 the court finds the analysis employed by district courts in this circuit in the context of a class
25 action governed by Rule 23 to be applicable. "When the constitutional right of privacy is
26 involved, 'the party seeking discovery must demonstrate a compelling need for discovery, and
27 that compelling need must be so strong as to outweigh the privacy right when these two
28 competing interests are carefully balanced." *Artis v. Deere & Co.*, 276 F.R.D. 348, 352 (N.D.

1 Cal. 2011) (quoting *Wiegele v. FedEx Ground Package Sys.*, 2007 WL 628041, at * 2 (S.D. Cal.
2 Feb. 8, 2007)). "Even when discovery of private information is found directly relevant to the
3 issues of ongoing litigation, it will not be automatically allowed; there must then be a 'careful
4 balancing' of the 'compelling public need' for discovery against the 'fundamental right of
5 privacy." *Id.* (internal quotation marks and citation omitted).

6 Here, the potential plaintiffs basic contact information (name, address, telephone number,
7 e-mail address) may allow Plaintiffs to obtain relevant discoverable information to show that
8 they are "similarly situated" for purposes of a collective action brought under the FLSA. In the
9 context of an action governed by Rule 23, courts have determined that this basic contact
10 information is less sensitive than "more intimate privacy interests such as compelled disclosure
11 of medical records and personal histories." *Id.* at 353 (citation omitted). As such, the privacy
12 objection must yield to Plaintiffs' request for this information. Moreover, the protective order
13 entered into by the parties and approved by the court will protect the privacy interests of these
14 putative class members insofar as this information is concerned.

15 Since GSR has provided this basic information at this point, the court will now address
16 the request for the job duties, job classification and rate of pay for each putative class member,
17 which was not specifically addressed in the parties' briefing. Plaintiffs seem to suggest that
18 *Putnam* stands for the proposition that this information is also required to be produced. A review
19 of *Putnam*, however, reveals that the court only required the disclosure of the names, addresses,
20 and telephone numbers of the putative class members. *Putnam*, 508 F.Supp.2d at 814-15. Neither
21 the Plaintiffs nor GSR cited any authority related to the production of this information in a
22 collective action brought under the FLSA.

23 A decision from the Southern District of California recently analyzed whether a plaintiff
24 bringing a putative wage and hour class action governed by Rule 23 was entitled to discover
25 information including work schedules, clock-in and clock-out data and schedules of meeting.
26 *Coleman v. Jenny Craig, Inc.*, Civil No. 11-cv-1301-MMA (DHB), 2013 WL 2896884 (S.D. Cal.
27 June 12, 2013). In that case, like GSR here, the defendant objected to providing this information
28 on privacy grounds (among other concerns). The court found that these records were clearly

1 relevant, and then engaged in a balancing of the need for discovery against the right of privacy of
 2 the employees. *Id.* at * 8-10. The court concluded that the production of the time card and work
 3 schedule information was not likely to significantly invade anyone's privacy and compelled the
 4 defendant to produce these records. *Id.*

5 Here, the court similarly finds that the job duties and classifications of the potential
 6 plaintiffs are clearly relevant to whether they are similarly situated to the named plaintiffs and
 7 the production of this information is unlikely to significantly invade the privacy of the putative
 8 class members. Therefore, to the extent Plaintiffs seek an order compelling GSR to provide this
 9 information, the motion is **GRANTED**.

10 The only remaining issue with respect to Plaintiffs' interrogatory is the request for the
 11 rate of pay for each potential plaintiff. The court in *Coleman* confronted a similar issue when the
 12 plaintiff requested payroll records of the putative class members and found that these documents
 13 contained more confidential and sensitive information than contact information or time records.
 14 *Id.* at * 11. Consistent with that decision, the court finds that the privacy concerns inherent in the
 15 discovery of the pay rates for each of the potential opt-in plaintiffs which would come from
 16 payroll records outweigh Plaintiffs' asserted need for this information. If the action is
 17 conditionally certified, Plaintiffs may then address obtaining this information from the opt-in
 18 plaintiffs. Accordingly, Plaintiffs' motion to compel GSR to provide the pay rate information is
 19 **DENIED WITHOUT PREJUDICE**.

20 In sum, Plaintiffs' motion to compel GSR to provide a complete response to its
 21 interrogatory is **GRANTED IN PART AND DENIED IN PART**, as described above.
 22 Responsive information shall be provided on or before **May 16, 2014**.²

23 **B. Requests for Production of Documents**

24 RFPs 5, 6 and 10 request documents concerning the named Plaintiffs only. (Doc. # 26-2
 25 at 5-6.) RFPs 12-21 request documents related to the potential opt-in plaintiffs. (Doc. # 26-2 at 6-
 26 8.) The court will now address each of these RFPs, in turn, categorizing similar requests together

27
 28 ² At the hearing, GSR confirmed that this was an "outside deadline" and that much of the information will
 in all likelihood be provided to Plaintiffs at an earlier date. This applies to the interrogatory as well as the RFPs.

1 where possible.

2 **1. RFPs 5 and 6**

3 These RFPs seek the production of documents relating to payments made for hours
4 worked, including pay statements and clock-in and clock-out data from GSR's timekeeping
5 system.

6 In their response, GSR identified the employment records produced in its initial
7 disclosures for the named plaintiffs. Plaintiffs argued this response was incomplete because GSR
8 failed to provide complete records for Ms. Boggs and Ms. Wiederholt. In its responsive
9 memorandum, GSR represented that it would produce the complete records, but as of the date of
10 the hearing on Plaintiffs' motion this had not been done. Moreover, Plaintiffs argued that they
11 were not provided with "swipe data" which reflects the time that these employees entered and
12 exited the property and clocked-in and clocked-out for their shifts. Therefore, Plaintiffs' motion
13 to compel is **GRANTED** with respect to RFPs 5 and 6 and GSR is ordered to produce complete
14 records for Ms. Boggs and Ms. Wiederholt as well as the "swipe data" for the named Plaintiffs
15 on or before **May 16, 2014**.

16 **2. RFP 10**

17 This RFP seeks documents that reflect time spent by these Plaintiffs attending mandatory
18 training or exercise classes before or after their scheduled shift. (*Id.*)

19 In response to RFP 10, GSR identified the employment records of the named Plaintiffs.
20 Plaintiffs argue that these records did not contain any documents responsive to this request.
21 Specifically, they argued that Ms. Cryderman worked in a position that should result in the
22 production of documents responsive to this request. GSR represented that its understanding was
23 that Ms. Cryderman did not work in such a position. Plaintiffs' motion to compel is **GRANTED**
24 such that GSR is required to perform an additional search of its records to determine if
25 responsive documents exist with respect to Ms. Cryderman for her relevant employment dates of
26 November 28, 2012 through April 24, 2013, and if such documents do exist they shall be
27 produced on or before **May 16, 2014**.

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1 **3. RFP 12**

2 RFP 12 seeks documents describing the putative class members' job duties. (*Id.* at 6.)
3 GSR objected to this request on the grounds that the class has not yet been certified and
4 production of this data would violate the putative class members' privacy rights.

5 Consistent with its analysis and ruling on Plaintiffs' motion to compel a response to their
6 interrogatory, GSR's objection is overruled and Plaintiffs' motion to compel a response to RFP
7 12 is **GRANTED**.

8 **4. RFP 13**

9 RFP 13 seeks clock-in and clock-out data for the putative class members. (*Id.*)
10 Defendants likewise objected to this request on the grounds that the class has not yet been
11 certified and production of this data would violate the putative class members' privacy rights.

12 As it ruled with respect to the interrogatory, Plaintiffs are entitled to discovery of the
13 clock-in and clock-out data and "swipe data" for the potential opt-in plaintiffs. Therefore, GSR's
14 objection to this RFP is overruled and Plaintiffs' motion to compel a response to RFP 13 is
15 **GRANTED**. Responsive documents shall be produced on or before **May 16, 2014**.

16 **5. RFPs 14-17**

17 RFPs 14-17 seek documents that reflect time spent by putative class members: retrieving
18 or returning and reconciling a cash bank of money before or after their scheduled shift; attending
19 pre-shift meetings; completing paperwork or performing cleaning tasks before or after their
20 scheduled shift; attending mandatory training or exercise classes before or after their scheduled
21 shift. (*Id.* at 6-7.)

22 GSR has objected to producing documents responsive to these RFPs on the grounds that a
23 class has not yet been certified and it would require the production of documents containing
24 personal and confidential information in violation of the putative class members' privacy rights.

25 This information is relevant to class certification and Plaintiffs' underlying claims.
26 Production of this information will not significantly impinge on the privacy rights of the
27 potential opt-in plaintiffs; therefore, Plaintiffs' need for the information outweighs the asserted
28 privacy interests. GSR's objection is overruled and Plaintiffs' motion to compel responses to

1 RFPs 14-17 is **GRANTED**. Responsive documents, if they exist, shall be provided on or before
2 **May 16, 2014**.

3 **6. RFPs 18-21**

4 These RFPs seek the production of documents reflecting any investigation, inquiry or
5 correspondence from the Nevada Labor Commissioner or United States Department of Labor
6 regarding claims for unpaid wages for GSR's non-exempt hourly employees related to: (1)
7 having to retrieve or return and reconcile cash bank accounts prior to or after a scheduled shift
8 (RFP 18); (2) having to attend pre-shift meetings (RFP 19); (3) having to complete paperwork or
9 perform cleaning tasks before or after a scheduled shift (RFP 20); and (4) having to attend
10 mandatory training or exercise classes before or after a scheduled shift (RFP 21).

11 GSR again objected to these RFPs on the basis that the class had not yet been certified
12 and production of this information would violate the privacy rights of the putative class
13 members. They further objected on the basis that the requests were overly broad because they
14 were not limited in time.

15 The information sought in these requests is relevant to Plaintiffs' allegations and is
16 therefore discoverable. At the hearing on this motion, GSR represented that it was undertaking a
17 search for documentation responsive to these RFPs. This seems to acknowledge the relevancy of
18 the information. Insofar as GSR objects on the basis that production of this information would
19 violate the privacy rights of the putative class members, steps can be taken to protect any
20 confidential or sensitive information contained in the records while alerting Plaintiffs as to
21 whether or not any inquiry or investigation was commenced by the Nevada Labor Commissioner
22 or United States Department of Labor regarding the allegations that are the subject of this action.
23 Therefore, GSR's objections are overruled. However, the court restricts the time period regarding
24 any relevant governmental investigations to when GSR and its principals have operated the
25 property. Plaintiffs' motion to compel a response to these RFPs is **GRANTED**. GSR shall
26 produce responsive documents, if they exist, on or before **May 16, 2014**.

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28 ///

C. Request for Costs and Fees

Rule 37 explicitly states that if a motion to compel is granted, "the court must, after giving an opportunity to be heard, require the party...whose conduct necessitated the motion...to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees" unless the opposing party can demonstrate that its "nondisclosure, response, or objection was substantially justified" or "other circumstances make an award of expenses unjust." Fed. R. Civ. P. 37(a)(5)(A).

Plaintiffs included a request for fees and costs in their motion; however, they did not include any documentation of fees and costs incurred to allow the court to ascertain the amount of reasonable fees and costs incurred. (Doc. # 26 at 27.) GSR did not address this request in its opposition. Because Plaintiffs did not provide documentation concerning the specific amount of fees and costs requested and because Rule 37 requires that the opposing party be given an opportunity to be heard, the court directs Plaintiffs file a separate and properly supported motion requesting fees and costs, including attorney's fees, incurred in bringing their motion within **ten days of the date of this Order**. GSR may then file a response and Plaintiffs may file a reply in accordance with the Local Rules of Practice.

D. Discovery Plan and Scheduling Order

In their supplemental memorandum, Plaintiffs request an adjustment of the discovery plan and scheduling order due to the delay in obtaining discovery. (Doc. # 34 at 4:18-23.) They ask that the deadlines in the order be extended sixty days. (*Id.*) At the hearing, the court advised the parties to submit a revised discovery plan and scheduling order extending the deadlines in the previous version by 120 days.

IT IS SO ORDERED.

DATED: April 22, 2014


WILLIAM G. COBB
UNITED STATES MAGISTRATE JUDGE